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EAST TIMOR
Broken promises

Implementation of the Recommendations of the UN Special Rapporteur on extrajudicial, summary of arbitrary executions following a visit to Indonesia and East Timor in 1994

March 1998 SUMMARY AI INDEX: ASA 21/24/98
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This document examines the extent to which the Government of Indonesia has implemented the recommendations made by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions following his visit to Indonesia and East Timor in 1994.

The UN experts or 'mechanisms', such as the Special Rapporteur, are appointed by the UN Commission on Human Rights (the Commission) to monitor particular types of human rights violations throughout the world. Their reports to the Commission are a source of facts, objective analysis and recommendations for change and have greatly increased the awareness and understanding of the violations they deal with.

Unfortunately, their recommendations, including those contained in reports after country visits, are too often ignored by the Commission and the governments concerned.

The purpose of the visit by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions to Indonesia and East Timor in July 1994 was to gather information about the events in the Santa Cruz Cemetery in Dili, the capital of East Timor, on 12 November 1991, when Indonesian troops opened fire on a peaceful pro-independence demonstration. At least 100 and possibly many more East Timorese were killed or "disappeared" in what has since become known as the Santa Cruz or the Dili massacre.

While the Special Rapporteur's report focused on a particular event in East Timor, the recommendations he raised highlighted fundamental causes of human rights violations prevalent throughout East Timor and Indonesia, as the problems of East Timor, while special, follow patterns of human rights violations seen throughout Indonesia also. They

include the use of force against peaceful dissent, excessive force against violent disturbances and a lack of accountability within the security forces. The Special Rapporteur's recommendations remain especially relevant at the moment, as the Indonesian authorities are responding to the country's current political and economic crisis with bans on peaceful demonstrations, large-scale arrests of peaceful protesters, use of repressive legislation and excessive force.

If implemented, the Special Rapporteur's recommendations could have led to a decrease in the number and frequency of violations of the right to life in Indonesia and East Timor. However, only one of the recommendations, to establish an independent human rights commission in Indonesia and in East Timor, has been put into effect, albeit in an incomplete manner. Because of this lack of implementation, serious human rights violations, including "disappearances" and extrajudicial executions, continue.

It is not just these recommendations however which the Government of Indonesia has failed to act upon. Neither the recommendations contained in the resolutions the Commission adopted in 1993 and 1997 concerning the human rights situation in East Timor, nor those contained in statements made by the Chair of the Commission in the intervening years have been implemented. Also, the commitments made by the Indonesian authorities to the UN High Commissioner for Human Rights during his December 1995 visit to Indonesia and East Timor have yet to be fulfilled.

At the end of this document, Amnesty International calls on the Commission to urge the Government of Indonesia to immediately implement all outstanding recommendations made by the Commission and its experts, to fulfill the commitments made to the UN High Commissioner for Human Rights, to guarantee Indonesian and East Timorese citizens the right to freedom of expression and association, to establish an indigenous East Timorese independent human rights commission and to permit full and unconditional access to all areas of Indonesia and East Timor by national and international human rights organizations.

KEYWORDS: UN1 / EXTRAJUDICIAL EXECUTIONS1 / DISAPPEARANCES / INVESTIGATION OF ABUSES / IMPUNITY / NATIONAL HUMAN RIGHTS COMMISSION / MILITARY / MILITARY JUSTICE / INDEPENDENCE OF JUDICIARY / COMPENSATION / NON-GOVERNMENTAL ORGANIZATIONS / HUMAN RIGHTS INSTRUMENTS /

This report summarizes a 18-page document (6303 words), EAST TIMOR: Broken promises (AI Index: ASA 21/24/98) issued by Amnesty International in March 1998. Anyone wishing further details or to take action on this issue should consult the full document.

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East Timor: Broken promises

Implementation of the Recommendations of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions following a visit to Indonesia and East Timor in 1994

This document is among several Amnesty International is producing to examine the extent to which governments have implemented recommendations made by United Nations (UN) thematic experts following on-site visits to the country. These thematic experts or 'mechanisms' are established and mandated by the UN Commission on Human Rights (the Commission), to which they report at the Commission's annual session every March/April in Geneva, Switzerland.

Importance of the thematic mechanisms

Amnesty International believes that the thematic mechanisms of the Commission[1] are extremely important for the promotion and protection of human rights, yet their recommendations are too often ignored by the Commission and individual states. Their analyses of the particular types of human rights violations in their annual reports to the Commission have greatly increased the awareness and understanding of these phenomena and include often incisive recommendations on how to stop these violations.

The thematic mechanisms' reports of country visits are a source of facts, objective analysis and recommendations for change. Yet, the constraints under which they work are considerable. They are unpaid and have meagre staffing and other resources provided by the UN. Many governments fail to respond to their enquiries, or reply with insufficient or inaccurate information. They may only visit a country on the invitation of the government. Many of their requests for invitations are denied or simply ignored, even by countries which are members of the Commission.

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[1] These thematic mechanisms are: Working Group on Enforced and Involuntary Disappearances (established in 1980), Working Group on Arbitrary Detention (1991), Special Rapporteur on extrajudicial, summary or arbitrary executions (1982), Special Rapporteur on torture (1985), Special Rapporteur on human rights and states of emergency (1985), Special Rapporteur on religious intolerance (1986), Special Rapporteur on the sale of children, child prostitution and child pornography (1990), Representative of the UN Secretary General on internally displaced persons (1991), Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance (1993), Special Rapporteur on freedom of opinion and expression (1993), Special Rapporteur on violence against women (1994), Special Rapporteur on the independence and impartiality of the judiciary (1994), and Special Rapporteur on toxic waste and dangerous products and waste (1995).

It is a positive step when a country extends an invitation to one of the Commission's thematic experts to carry out an on-site investigation, because it demonstrates the government's will to identify and tackle human rights violations and to cooperate with the UN mechanism. In far too many cases, however, governments are slow or fail to implement the experts' recommendations and thus lose a valuable opportunity to introduce reforms, in law and in practice, which could halt grievous human rights violations.

Amnesty International has for some years advocated that the Commission should pay more attention to implementation of the mechanisms' recommendations. On several occasions, it has called on the Commission to establish an agenda item to monitor states' cooperation and progress on implementing recommendations made by the Commission and by its human rights mechanisms, in particular after country visits.[2] Such an agenda item would enhance the work of the thematic mechanisms and strengthen their effectiveness. In cases where there is a pattern of violations and where the government persistently delays or obstructs cooperation with one or more of the thematic mechanisms, the latter should transmit the full dossier to the Commission for further action. Where country visits have taken place by thematic rapporteurs or working groups, governments must report back promptly on steps they have taken to implement the recommendations made following the visit. Each recommendation should be addressed and governments should state the time frame for implementation and indicate any difficulties they may experience in implementing the recommendations.

This and other similar Amnesty International reports aim to remind members of the Commission that they have a responsibility to ensure that the recommendations of thematic mechanisms are implemented and the states concerned that it is their major task to put those recommendations into practice.

Indonesia and the United Nations human rights mechanisms

Human rights violations in Indonesia and East Timor have been the subject of scrutiny by the UN human rights experts and mechanisms for many years. The Commission, however, has given its attention only to the situation in East Timor. The problems of East Timor, while special, reflect patterns of human rights violations seen throughout Indonesia also. This is especially the case at the moment, as the Indonesian authorities respond to the current political and economic crisis in the country with bans on peaceful demonstrations, large-scale arrests of peaceful protesters, use of repressive legislation and excessive force

[2] See for example Amnesty International, *1998 UN Commission on Human Rights - Building on past achievements* (AI Index: IOR 41/01/98), and Amnesty International, *1997 UN Commission on Human Rights - 50 years old* (AI Index: IOR 41/01/97).

by security forces. Attention by the Commission and action to stop human rights violations is particularly important at this time.[3]

Only two of the UN Special Rapporteurs have been granted permission to conduct visits to Indonesia and East Timor. In July 1994, the Special Rapporteur on extrajudicial, summary or arbitrary executions investigated violations of the right to life in East Timor. His report and recommendations are addressed in more detail below. In November 1991, the Special Rapporteur on torture visited Indonesia and East Timor. He concluded that torture was occured in Indonesia and East Timor and made 11 recommendations.[4]

Both of the Special Rapporteurs addressed the urgent need for Indonesia to initiate independent and full inquiries into violations of human rights and for those believed responsible to be brought to justice. A recommendation common to both Special Rapporteurs was for the Indonesian Government to establish independent human rights commissions in Indonesia and in East Timor. It is this recommendation alone which has been implemented - albeit in an incomplete manner.

Indonesia established the Indonesian National Commission on Human Rights (*Komisi Nasional Hak Asasi Manusia,* Komnas HAM) by Presidential Decree in 1993. Komnas HAM has become an important mechanism for the protection of human rights in Indonesia. It has produced reports critical of the government and the security forces concerning both Indonesia and East Timor and its findings have resulted in some members of the military facing prosecution for violations of human rights. However, Komnas HAM has limited resources and legal powers and the Indonesian Government often ignores its findings or only implements them partially. In addition, its ability to function in areas of Indonesia with high military surveillance are limited. An office of Komnas HAM established in Dili, East Timor, in January 1996 has not operated effectively - it has conducted few if any investigations into recent violations of human rights, leaving East Timorese without even this limited mechanism for seeking justice and redress for human rights violations. Its operations are subject to intensive military surveillance.[5]

It is not just these recommendations, however, which the government has failed to act upon. In 1993 and again in 1997, the UN Commission on Human Rights adopted

[3] For information about Amnesty International's concerns about recent violations in Indonesia see Amnesty International, *Indonesia: Paying the Price for "Stability"* (AI Index ASA 21/12/98), 25 February 1998

[4] See UN document E/CN.4/1992/17/Add.1

[5] See below recommendation 16, page 13/14

resolutions concerning the human rights situation in East Timor.[6] In the intervening years, statements by the Chair of the Commission were negotiated with the government.[7] Neither the recommendations contained in the two resolutions or the commitments that Indonesia agreed to in the Chair's statements have been fulfilled. Similarly, commitments made by the Indonesian authorities to the UN High Commissioner for Human Rights during his December 1995 visit to Indonesia and East Timor, when "the government of Indonesia expressed its determination to further the cooperation with the mechanisms of the Commission on Human Rights and to continue to implement their recommendations" [8] have also yet to be acted upon.

Background to the Special Rapporteur on extrajudicial, summary or arbitrary executions' visit to Indonesia and East Timor

In January 1994, the Special Rapporteur, Mr Bacre Waly Ndiaye (Senegal), was granted permission by the Indonesian authorities to visit East Timor. The Special Rapporteur had requested access to areas of Indonesia including Aceh and Irian Jaya but this request was not granted. In July 1994, the Special Rapporteur travelled to Indonesia and East Timor. The purpose of his visit was to gather information about the events in the Santa Cruz Cemetery in Dili, East Timor, on 12 November 1991, when Indonesian troops opened fire on a peaceful pro-independence demonstration, held to commemorate the death of an East Timorese man who had been stabbed during a confrontation in Dili a month before. At least 100 and possibly many more East Timorese were killed or "disappeared" in what has since become known as the Santa Cruz or the Dili massacre.[9] During the visit, the Special Rapporteur's mission was "*in particular to assess the government's fulfilment of the standards under international law concerning the use of force by law-enforcement officials and its obligation to investigate all allegations of summary executions, to bring to justice their perpetrators, to provide compensation to the families of the victims and to prevent their occurrence*"[10].

[6] Resolution 1993/97 (UN document E/1993/23 - E/CN.4/1993/122, page 277) and resolution 1997/63 (UN document E/1997/23 - E/CN.4/1997/150, page 211).

[7] UN document E/1994/24 - E/CN.4/1994/132, page 382; UN document E/1995/23 - E/CN.4/1995/176, page 421; UN document E/1996/23 - E/CN.4/1996/177, page 361

[8] Report of the UN High Commissioner on Human Rights on his visit to Indonesia and East Timor, 3-7 December 1995, UN document E/CN.4/1996/112, para.23

[9] See Amnesty International, *East Timor: Truth, justice and redress* (AI Index ASA 21/81/97), and UN document E/CN.4/1992/30 paras 279-286.

[10] UN document E/CN.4/1995/61/Add.1, para. 6 (a).

The Special Rapporteur visited Indonesia and East Timor from 3 to 13 July 1994. His report was presented to the Commission in February 1995.[11] In the report, he concluded:

> *"[...] that the lessons regarding the behaviour of the security forces should have been drawn by the Indonesian authorities after the Santa Cruz killings, so as to take decisive action with a view to rendering the recurrence of such a tragedy impossible in the future. Unfortunately, the information gathered during meetings with Indonesian officials ...[led] the Special Rapporteur to conclude that the conditions that allowed the Santa Cruz killings to occur are still present. In particular, the members of the security forces responsible for the abuses have not been held accountable and continue to enjoy virtual impunity."*[12]

His report found that there was still insufficient information about the precise numbers and identity of those killed or "disappeared" during the massacre, that the authorities had failed to thoroughly, fully and independently investigate the events and that families of the victims had not yet been compensated.[13]

The importance of the Special Rapporteur's recommendations

The recommendations of the Special Rapporteur highlighted fundamental causes of human rights violations in Indonesia and East Timor, including the use of force against peaceful dissent, excessive force against violent disturbances and a lack of accountability within the security forces. If implemented, these recommendations could have led to a decrease in the number and frequency of violations in Indonesia and East Timor. Because these recommendations have been largely ignored, serious human rights violations, including "disappearances" and extrajudicial executions continue, despite the work of Komnas HAM - the one substantive concession which the Indonesian Government has made to human rights protection in recent years.

A recent spate of deliberate and arbitrary killings alleged to have been committed by the armed resistance in East Timor also remain uninvestigated. During the general elections in East Timor, the East Timorese National Liberation Army, *Falintil*, attacked

[11] UN document E/CN.4/1995/61/Add.1.

[12] UN document E/CN.4/1995/61/Add.1, Paragraph 74

[13] UN document E/CN.4/1995/61/Add.1, paragraphs 52, 56, 57,62, 64, 73

military and civilian targets. Resistance sources admitted to some of the civilian deaths.[14] Amnesty International has publicly condemned the *Falintil* attacks against civilians. There have been several more recent allegations of civilians killed by *Falintil*, but it is not possible independently to investigate these allegations because of restrictions on access to East Timor imposed by the Indonesian Government.

The unwillingness, or the inability of the Indonesian Government to implement recommendations made by the Special Rapporteur and other UN mechanisms and experts reflects a general reluctance by the authorities to address the fundamental causes of human rights violations in Indonesia and East Timor, including the impunity enjoyed by the security forces. While acknowledging that some cases of human rights violations have been brought to court, Amnesty International considers that little has changed in the three years since the Special Rapporteur concluded that the members of the security forces in East Timor were able to operate with *"virtual impunity".*[15] The security forces in both Indonesia and East Timor are still able to torture, kill, and "disappear" people in the knowledge that they are unlikely to be brought to justice for their actions.

While the Special Rapporteur's report focused on a particular event in East Timor, its recommendations addressed a pattern of violations prevalent throughout Indonesia and East Timor. He stated that "*in examining the situation of the right to life in East Timor, other grave human rights violations attributed in Indonesia itself (for instance in Aceh and Irian Jaya), [...] should be borne in mind. In particular the patterns of dealing violently with political dissent and the virtual impunity enjoyed by members of the security forces responsible for human rights violations should be recalled.*"[16] In the context of growing economic and political instability in Indonesia there are fears that the human rights situation may deteriorate further as dissent grows and the security forces resort to repressive measures to silence the government's critics and to control rioters.[17]

[14] For example, the killing of two civilians, Miguel Baptismo da Silva and his wife (whose name is not known) in Baucau on 28 May 1997.

[15] UN document E/CN.4/1995/Add.1, paragraph 74

[16] UN document E/CN.4/1995/Add.1, Paragraph 42.

[17] See Amnesty International, *Indonesia: Paying the Price for "Stability"* (AI Index ASA 21/12/98)

The Special Rapporteur's Recommendations and the government record

Following the release of the Special Rapporteur's report, the Indonesian Government circulated comments at the 1995 Commission which stated that it would be "difficult" for the government to implement the findings which it concluded were subjective and based on unsubstantiated information. Three years later, with the exception of the recommendation on the establishment of human rights commissions, the government still displays no will to act on his findings. The Special Rapporteur's recommendations are listed below in bold italicised type and are followed by Amnesty International's assessment of the government's record on implementation.

1. The Indonesian Government should carry out thorough, prompt and impartial investigations, in accordance with international standards, of all suspected cases of extrajudicial, summary and arbitrary executions and enforced or involuntary disappearances (paragraph 78).

✗ Not implemented.

The majority of killings and "disappearances" that have occurred during and since the Santa Cruz massacre have not been fully and impartially investigated, nor have perpetrators been consistently brought to justice. Although some recent cases of serious human rights violations in East Timor have been investigated, they remain the exception rather than the rule and the investigations have not always been conducted thoroughly or by independent bodies.[18] Until today, conditions persist whereby members of the armed forces can act with virtual impunity. There are no mechanisms which ensure that allegations of human rights violations are systematically, thoroughly and independently investigated.

2. The Government of Indonesia should establish a civilian police force, placed under the authority of the Prosecutor, as a matter of urgency (paragraph 78).

✗ Not implemented.

The Indonesian Police remain under the control of the armed forces in Indonesia and East Timor.

[18] For example, two soldiers were jailed in 1995 following an investigation in Liquiza, East Timor, into the unlawful killing of six men, who the soldiers had claimed were "guerillas". In July 1996, a soldier was sentenced to eight months' imprisonment for the unlawful killing of Paulo dos Reis, who had allegedly verbally abused the soldier and thrown a stone at him.

3. The findings of the military inquiry into the Santa Cruz killings should be made public (paragraph 79).

✗ Not implemented.

The full findings of the military inquiry into the Santa Cruz killings have never been made public.

4. A new commission of inquiry should be appointed to carry out additional investigations into the Santa Cruz killings, to determine the circumstances of the killings, the number and identity of persons killed and missing, the chain of command and the identity of the perpetrators and superiors. The commission should be composed of individuals of recognized independence, impartiality and expertise and be provided with the necessary resources for effective investigations. The necessary measures to protect complainants, witnesses and their families from violence and intimidation should be taken and the families of the victims informed (paragraph 79).

✗ Not implemented.

Until today, there has never been a full and impartial investigation into the massacre. During the visit of the UN High Commissioner for Human Rights to Indonesia and East Timor in 1995, the Government of Indonesia was quoted by the High Commissioner as having "agreed to continue the search for the missing" from the Dili massacre.[19] In 1997, however, the government transmitted a letter to the Commission which stated that "one particular problem in this matter is that many of those who were involved in the violent demonstrations [sic] leading to the incident have not come forward or have left the country clandestinely".The government stated as relevant new details that several of those involved in the Santa Cruz demonstration have since then either fled East Timor via foreign embassies in Jakarta, gone to Australia by boat in 1995, or been captured during the Indonesian Armed Forces operations in East Timor and "confirmed their involvement" in the Dili demonstration at Santa Cruz.[20]

The Indonesian Government did not give a figure for those who have subsequently been discovered - referring at different times to "a number of suspects" or "a number of East Timorese". The government provided six names, which are Geronimo (32), Angelina (21), Valente (16), Manuel Amaral (27), Theofilo de Yesus (36) and Manuel (27). Manuel

[19] UN document E/CN.4/1996/112, para. 26.

[20] Letter by the Government of Indonesia dated 12 February 1997 (UN document E/CN.4/1997/51/Add.1)

Amaral and Theofilo de Yesus do not appear on the Indonesian Government's own list of names of those who disappeared following the massacre, neither do they appear on non-governmental lists held by Amnesty International. Neither the government's list nor the non-governmental lists contain any individuals named Geronimo, Angelina or Valente, although there is a Jose Valente (age not known) listed in the non-governmental lists. There are several individuals listed under the name of Manuel but without further information it is not possible to determine whether any of these people refer to the 27-year-old Manuel the Indonesian Government claimed was arrested in December 1996.

The government's letter to the Commission in 1997 stated that "*Those facts represent solid grounds to believe that almost all 54 people reported as unaccounted for were either fleeing the jungles and joined the armed separatist group or mixed in with ordinary people.*" and added "*It now seems to have become futile for the Government of Indonesia to continue the search for the missing persons.*"[21]

Amnesty International considers that the information submitted by the Government of Indonesia is in no way sufficient and does not represent grounds for ending the search for those missing.

5. The impunity of the Indonesian Armed Forces responsible for human rights abuses should be ended (paragraph 81).

✗ Not implemented

In recent years, several members of the Armed Forces - including police - have been tried and sentenced to prison terms for their involvement in human rights violations in Indonesia and East Timor, in several cases following investigations by Komnas HAM. However, this is not a systematic process and in the majority of cases, members of the Armed Forces are not brought to justice for their alleged involvement in human rights violations.

6. Jurisdiction for human rights cases should be handed over to the ordinary civilian judiciary (paragraph 81 a).

✗ Not implemented.

[21] UN document E/CN.4/1997/51/Add.1

Soldiers or members of the police force continue to be brought to justice in military, not civilian, courts.

7. The independence of the judiciary should be improved (paragraph 81 b).

✗ Not implemented.

There has been no attempt to improve the independence of the Indonesian judiciary in East Timor.

8. Provision should be made to allow victims or their families to initiate judicial proceedings. In particular, investigations into complaints by victims or their families should be compulsory. Victims or their families should be granted full participation in their proceedings, and free choice of independent counsel should be granted.

✗ Not implemented.

Amnesty International is not aware of any case since the Santa Cruz massacre where a complaint by a family member has led to an independent and full inquiry into a violation and the bringing to justice of those believed responsible. On the contrary, Amnesty International is concerned that victims and their families who attempt to raise violations with the authorities are still at risk of harassment. In September 1995, Adao Fernandes Cabral, a Sub-District Head in Luro, Los Palos, was found dead in his house. There were concerns that his death was connected to his refusal to give planning permission for a development project in Luro. Following his death, his wife was taken into custody and pressured to sign a statement that her husband had killed himself, a claim with which she did not agree. She subsequently submitted details of her husband's death to Komnas HAM in Jakarta which announced in November 1996 that it was investigating the death. It is not know whether the Komnas HAM inquiry was ever concluded.

9. Persons identified by the investigation as being responsible for abuses should be brought to justice in public proceedings. Human rights violations should be offences under criminal law punishable by appropriate penalties, taking into account their seriousness (paragraph 81 d).

✗ Not implemented.

Public access to information about military trials of members of the security forces remains limited. Those members of the security forces tried for their role in the killings at Santa Cruz were tried for disciplinary offences. None was charged with murder and only one police corporal was charged with assault, despite the killings and substantial evidence of torture. All those members of the security forces who were tried received sentences of between eight and 18 months, in contrast to the East Timorese accused of organizing the peaceful demonstration, five of whom are still serving terms of up to life imprisonment.

Some soldiers recently brought to military courts in East Timor and Indonesia for their involvement in human rights violations have faced charges of manslaughter or assault, under both the Military Criminal code and the Civilian Criminal Code. In 1996, a soldier was convicted of manslaughter under the Civilian Criminal Code following the death of an East Timorese civilian, Paulo dos Reis, in 1996. The soldier received a prison sentence of eight months for shooting Paulo dos Reis after dos Reis allegedly threw rocks at the soldier. Also in 1996, four soldiers were convicted of murder and disciplinary offences in Irian Jaya and sentenced to prison terms of between one and three years in relation to the death of three civilians. Komnas HAM however, following an investigation, claimed that eight other civilians were killed during the same incident and that in related events five other civilians were unlawfully killed and four "disappeared". These other killings and "disappearances" have never been adequately investigated and no member of the security forces has been held to account for them.[22]

10. "Disappearances" should be considered continuing offences as long as the perpetrators continue to conceal the fate and whereabouts of persons who have "disappeared" (paragraph 81 e).

✗ Not implemented.

The fate of those "disappeared" during the Santa Cruz massacre remains unknown and there does not appear to be any attempt by the government to continue the investigation into their whereabouts. The fate of others who have "disappeared" since also remains unknown. Five men "disappeared" in Dili in January 1995. Despite the fact that the Dili Police Chief announced that there would be an investigation into their whereabouts, the "disappearance" of the five men remains unresolved and it is not clear whether there ever was a police investigation.

[22] See Amnesty International, *Indonesia: Full Justice? Military trials in Irian Jaya* (AI Index ASA 21/17/96), March 1996.

11. Equitable compensation should be granted without delay to the victims or their dependents and their families (paragraph 81 f).

✗ Not implemented.

Amnesty International is not aware of any individual in East Timor - or Indonesia - having received compensation from the government for human rights violations following judicial or administrative proceedings of redress.

12. Victims should have access to mechanisms of justice and to prompt redress. They should be informed of their rights in seeking redress and of the judicial and administrative proceedings for justice and redress. Victims and their families should be ensured of their privacy and safety from intimidation during such proceedings (paragraph 82).

✗ Not implemented.

Mechanisms for justice and redress do not exist in East Timor. The Dili office of Komnas HAM, which has only been in operation for a year, has been headed by a former prosecutor who does not speak the predominant local language of East Timor. It is located close to a major military barrack making it impossible for East Timorese to feel secure lodging a complaint. The Dili office of Komnas HAM is not known to have intervened in any cases of arbitrary arrest or incommunicado detention and is known to have initiated investigations into only one case of "disappearance".

The families of those who "disappeared" or were killed during the Santa Cruz massacre have never been provided with access to mechanisms for justice and redress and many still fear reprisals if they do attempt to seek justice. The family of "Fernando", a 19 year old high school student who "disappeared" after taking part in the 1991 Santa Cruz demonstration, are still worried about reprisals, six years later, and do not want his real name to be revealed. At the time of his "disappearance" his sisters went to the military hospital to find out if he was there but were threatened with violence by a policeman if they did not go home.[23]

13. The involvement of the relatives of those missing or killed in any investigation is essential: a drastic reduction of the military presence in East Timor is a prerequisite for

[23] Amnesty International, *East Timor: Truth, justice and redress,* (AI Index ASA 21/81/97)

confidence-building measures allowing victims' families to feel safe enough to report their missing or killed relatives (paragraph 83).

✗ Not implemented

The conditions conducive to such involvement are not yet present in East Timor. There is still a far higher concentration of troops and police in East Timor than in most areas of Indonesia. While Amnesty International takes no position on the military presence in East Timor, the organization is concerned that the concentration of security forces and the high level of military surveillance perpetuates a climate in which victims and their families do not feel secure in making complaints about human rights violations.

14. The Indonesian authorities should allow and encourage the involvement of non-governmental organizations (NGOs) in human rights in East Timor. Independent NGOs should be created and allowed to operate freely (paragraph 84 a).

✗ Not implemented

There are a limited number of human rights lawyers and monitors operating in East Timor none of whom receive assistance from the government. The current atmosphere which is characterized by harassment, intimidation and surveillance, makes it very difficult for human rights defenders or domestic NGOs to function effectively.

15. Indonesian and international NGOs should be granted full access to East Timor (paragraph 84 b).

✗ Not implemented

The International Committee of the Red Cross (ICRC) has a presence in East Timor. International non-governmental human rights organizations including Amnesty International are still denied access to the territory, in spite of the Commission's 1997 resolution on East Timor calling upon Indonesia to grant access to East Timor for human rights organizations. Indonesian human rights organizations, while able to travel to East Timor, are under surveillance and have been subjected to harassment.

A delegation from the Australian Catholic Social Justice Council (ACSJC) - which is not an organization that works exclusively on human rights - was allowed to visit East Timor for one week during 1997. It had limited access to some detention centres and hospitals in Dili and Baucau and met with Indonesian officials and East Timorese church

and community leaders. It is not believed that they visited any military interrogation centres. Their confidential report was submitted to the Governments of Indonesia and Australia and a copy given to the UN High Commissioner on Human Rights.

16. A commission for human rights in East Timor should be created to monitor the situation, receive and independently monitor complaints, make recommendations to the competent authorities and disseminate information about human rights. The Special Rapporteur found that "[t]he Indonesian National Human Rights Commission was not the most appropriate body to deal with human rights violations in East Timor. Its mandate, means of action and methods of work [were] insufficient. Furthermore, it [was] not trusted by the population of East Timor." (paragraph 85)

✗ Not implemented.

In January 1996, the government set up an office of Komnas HAM, in Dili, East Timor. However, this apparently positive development hides serious short comings, as Komnas HAM is restricted in its ability to function effectively by heavy military surveillance and does not systematically investigate human rights violations. With the possible exception of one case of alleged "disappearance", the staff of the Dili office do not appear to have investigated any human rights violations involving Indonesian armed forces. The only effective investigations have been conducted by commissioners who have travelled from Komnas HAM's office in Jakarta. Moreover, because it is perceived as an Indonesian body, the Dili office of Komnas HAM does not have the trust of the local population.

Amnesty International - while recognising the important work that Komnas HAM has done in Indonesia itself - considers that there should be an East Timorese Human Rights Commission which is genuinely reflective of East Timorese civil society and comprised of individuals with recognized impartiality and independence.

17. The Indonesian Government should take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced "disappearance" (paragraph 86).

✗ Not implemented

No such measures are known to have been taken. "Disappearances" continue to be reported in East Timor.

18. Peaceful demonstrations and political dissent should be dealt with in conformity with international standards; the use of force by law enforcement officers should be restrained and better training provided for them (paragraph 87).

✗ Not implemented.

Some efforts have been taken to improve riot control in Indonesia and East Timor, but Amnesty International remains concerned that excessive force continues to be used against peaceful demonstrations and violent disturbances. In March 1997, police broke up a demonstration at the Mahkota Hotel in Dili where the Personal Representative of the UN Secretary General on East Timor was staying. The demonstration began peacefully, but ended in scuffles when security forces used violence to disperse the crowd. Komnas HAM's office in Jakarta conducted an investigation immediately following the incident and found that 37 protestors had been beaten by the security forces during the demonstration and that *"[p]olice attacked protestors with sticks and also kicked and punched them"*.[24]

In November 1997, a young man wounded during a confrontation with the Indonesian security forces at the University of East Timor in Dili, was dragged from an ICRC vehicle as he was being taken by the ICRC to get medical treatment. After being removed from the vehicle he was beaten and was taken into custody at Dili's military hospital and denied initial access to ICRC representatives. Following a preliminary assessment of the events, Komnas HAM's Jakarta office stated that "students suffered gunshot wounds, their teeth were smashed, faces swollen and bruised as a result of being hit by blunt objects".[25] There has been no further investigation of the events.

19. The Indonesian Government should invite the Working Group on Enforced and Involuntary Disappearances to visit (paragraph 88).

✗ Not implemented.

The Government of Indonesia has still not issued an invitation to the Working Group to visit East Timor. Requests from the Working Group on Arbitrary Detention, the Special Rapporteurs on torture, religious intolerance and freedom of expression and opinion are also outstanding. In the report by the High Commissioner on Human Rights after his visit to Indonesia and East Timor in December 1995, the Indonesian authorities are recorded as

[24]Reuters, 29 March 1997.

[25]Reuters, 24 November 1997.

indicating that they would extend invitations to UN human rights rapporteurs and working groups "in due time". [26] In 1996, the government again agreed in principle to invite a UN Special Rapporteur, and in the UN Commission's resolution of 1997, the Indonesian Government was urged to invite "rapporteurs and working groups" to visit East Timor, in particular the Special Rapporteur on torture. To Amnesty International's knowledge no invitations have yet been issued.

20. The government should accede to major human rights instruments such as the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (paragraph 88).

✗ Not implemented.

The Government of Indonesia has not acceded to these international human rights treaties. In recent years the government has claimed it is examining the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment, which Indonesia signed in 1985, with a view to ratification as a matter of priority. But despite vocal support within the country for the government to accede to the Convention, no action appears to have been taken.

Conclusion

Amnesty International calls on the UN Commission on Human Rights to urge the Indonesian Government to immediately:

- take steps to implement all outstanding recommendations made by the Commission and its experts including: to respect the independence of the judiciary and to restrict the use of force by law enforcement officials in accordance with international standards;

- fulfill commitments made to the UN High Commissioner on Human Rights during his 1995 visit, including to cooperate with mechanisms of the Commission and to implement their recommendations; to extend invitations to relevant thematic mechanisms of the Commission to visit - in particular the Special Rapporteur on

[26] Report of the High Commissioner on Human Rights on his visit to Indonesia and East Timor, 3-7 December 1995, UN document E/CN.4/1996/112, 14 March 1996, para. 23.

torture; and to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment;

- guarantee Indonesian and East Timorese citizens the right to freedom of expression and association without fear of harassment, arrest, torture or ill-treatment, arbitrary imprisonment or extrajudicial execution;

- immediately and unconditionally release anyone who is detained or imprisoned for the legitimate, non-violent exercise of their rights to freedom of expression or freedom of association;

- establish mechanisms which would ensure that all allegations of violations of human rights in Indonesia and East Timor, including those that occurred in the past such as the Santa Cruz massacre, are independently and fully investigated and that those found to be responsible are brought before civilian courts in trials which meet international standards for fair trial;

- provide redress including compensation to the victims of human rights violations and their families, including the victims or families of victims of the Santa Cruz massacre;

- implement recommendations made by Komnas HAM and ensure that the National Commission has the resources and legal status to be able to operate according to internationally agreed standards on national commissions on human rights;

- establish an indigenous East Timorese independent human rights commission which includes individuals with the expertise and credibility necessary to effectively investigate alleged human rights violations as well as representatives of East Timorese civil society with demonstrated impartiality;

- permit full and unconditional access to all areas of Indonesia and to East Timor by national and international human rights organizations and ensure that human rights activists and groups are able to carry out their work without fear of harassment or intimidation of themselves, victims or victims' families.

The Commission should also

- establish a regular agenda item to monitor states' cooperation and progress on implementing the recommendations made by the Commission and its human rights mechanisms. This would enhance the work and strengthen the efficiency of the

thematic mechanisms and ensure that states are held accountable for human rights violations.

For further information on the incidence of extrajudicial, summary or arbitrary executions in Indonesia and East Timor, see:

East Timor - Santa Cruz: Truth, justice and redress, November 1997 (AI Index: ASA 21/81/97).
East Timor: Respect for Human Rights - The precondition for a political solutions - Statement before the UN Special Committee on Decolonization, 16 June 1997 (AI Index ASA 21/40/97)
East Timor: Going through the motions - Statement to the UN Special Committee on Decolonization, 23 July 1966, July 1996 (ASA 21/39/96).
Indonesia and East Timor: When will the Commission take action ...? February 1996 (ASA 21/10/96).
East Timor: the Liquiza killings, February 1995 (ASA 21/15/95).
Indonesia and East Timor: Fact and Fiction - Implementing the Recommendations of the UN Commission on Human Rights, February 1994 (ASA 21/05/94).